



Billing Code: 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2014-0173; FRL-9918-21-Region 8]

Approval and Promulgation of Implementation Plans; North Dakota; Revisions to the Air Pollution Control Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving changes to North Dakota's State Implementation Plan (SIP).

On January 23, 2013, the Governor of North Dakota submitted to EPA revisions to several chapters of the North Dakota SIP. These revisions included the removal of subsections 33-15-03-04.4 and 33-15-05-01.2.a(l) of the North Dakota Administrative Code (NDAC). In this action, EPA is approving the removal of these subsections from the SIP because it is consistent with Clean Air Act (CAA) requirements. The State's submission corrects certain deficiencies related to the treatment of excess emissions from sources. EPA will address the remaining revisions from North Dakota's January 23, 2013 submission in other actions.

DATES: This final rule is effective [INSERT date 30 days after publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R08-OAR-2014-0173. All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air

Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop St., Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Adam Clark, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-7104, clark.adam@epa.gov.

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.
- (iii) The initials NDAC mean or refer to the North Dakota Administrative Code.
- (iv) The initials SIP mean or refer to state implementation plan.
- (v) The initials SSM mean or refer to startup, shutdown, and malfunction.
- (vi) The words State or North Dakota mean the State of North Dakota, unless the context indicates otherwise.

I. Background

On January 23, 2013, the Governor of North Dakota submitted to EPA SIP revisions that would remove both NDAC 33-15-03-04.4 and NDAC 33-15-05-01.2.a(1) from the North Dakota

SIP; the submission also contained other revisions to the North Dakota SIP. On July 16, 2014 (79 FR 41473), we proposed approval of the removal of subsections NDAC 33-15-03-04.4 and NDAC 33-15-05-01.2.a(1) from the North Dakota SIP, but we did not propose to take any action on the remaining revisions from the January 23, 2013 submittal.

In our proposed rule, we explained that, in accordance with the requirements of CAA section 110(a)(2)(A), SIPs must contain enforceable emission limitations and, in accordance with the definition of “emission limitations” in CAA section 302(k), such emission limitations must be continuous. In addition, under CAA section 304(a), any person may bring a civil action against any person alleged to have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of an “emission standard or limitation” under the CAA. For the purposes of section 304, “emission standard or limitation” is defined in section 304(f) and includes SIP emission limitations. Thus, SIP emission limitations can be enforced in a section 304 action and so must be capable of enforcement. SIP provisions that create exemptions such that excess emissions during startup, shutdown, malfunctions (SSM) and other conditions are not violations of the applicable emission limitations are inconsistent with these fundamental requirements of the CAA with respect to emission limitations in SIPs.

For these reasons, we proposed to approve the State’s removal of subsections NDAC 33-15-03-04.4 and NDAC 33-15-05-01.2.a(1) from the North Dakota SIP. In particular, NDAC 33-15-03-04.4 created exemptions from a number of cross-referenced opacity limits “where the limits specified in this article cannot be met because of operations and processes such as, but not limited to, oil field service and drilling operations, but only so long as it is not technically feasible to meet said specifications.” NDAC 33-15-05-01.2a(1) created an implicit exemption from particulate matter emissions limits for “temporary operational breakdowns or cleaning of

air pollution equipment” if the source met certain conditions. Because these provisions contemplated outright exemptions from the otherwise applicable SIP emission limits, they were inconsistent with CAA requirements. In addition, NDAC 33-15-03-04.4 had inherent ambiguities that called into question its enforceability.

The State’s removal of these provisions is sufficient to correct the inadequacies the provisions created and is consistent with the requirements of the CAA. As a result of their removal from the SIP, the improper exemptions from emissions limitations contained within these provisions will no longer be available to sources. Therefore, the emissions limitations will become continuous and more enforceable.

II. Response to Comments

The comment period for our June 16, 2014 proposal was open for 30 days. We received three brief comments on the proposed action. The Sierra Club submitted a comment in support of the proposed action, and two individuals submitted comments regarding other matters that are entirely unrelated to the proposed action. We acknowledge the supportive comment. We are not responding to the other comments on subjects unrelated to our proposal.

III. EPA's Final Action

We are approving the State’s removal of NDAC 33-15-03-04.4 and NDAC 33-15-05-01.2.a(1) from the North Dakota SIP, as reflected in the State’s January 23, 2013 SIP submission. This approval corrects the deficiencies contained in these provisions, as noted above, in our June 16, 2014 proposed rule, and in EPA’s February 22, 2013 proposed SSM SIP Call (78 FR 12531). Based on this final approval, EPA notes that these two deficiencies in the North Dakota SIP identified in the proposed SSM SIP call have now been correctly resolved. Thus, EPA’s final action on the SSM SIP call should not need to address these two deficiencies. We also note that

a third deficient provision, NDAC 33-15-03-04.3, was identified in the February 22, 2013 proposed SSM SIP call; however, the January 23, 2013 submission did not revise NDAC 33-15-03-04.3. Finally, we are not taking action today on the remaining portions of the January 23, 2013 submission.

IV. Statutory and Executive Orders Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this final action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 USC 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999); is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 USC 272 note) because application of those requirements would be inconsistent with the CAA; and,
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **insert date 60**

days after publication in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 2, 2014.

Debra H. Thomas,
Acting Regional Administrator,
Region 8.

40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart JJ – North Dakota

2. In §52.1820, the table in paragraph (c) is amended by revising the entries for “33-15-03-04” and “33-15-05-01” to read as follows:

§ 52.1820 Identification of plan.

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(c) * * *

State of North Dakota Regulations

| State citation | Title/subject | State effective date | EPA approval date and citation¹ | Explanations |
|-----------------------|---|-----------------------------|--|---------------------|
| * * * * * | 33-15-03 Restrictions of Visible Air Contaminants | | | |
| * * * * * | | | | |
| 33-15-03-04 | Exceptions | 1/1/13 | [insert Federal Register publication date], [Insert Federal Register citation] | |
| * * * * * | 33-15-05 Emissions of Particulate Matter Restricted | | | |
| 33-15-05-01 | Restrictions of emissions of particulate matter from industrial processes | 1/1/13 | [insert Federal Register publication date], [Insert Federal Register citation] | |
| * * * * * | | | | |

¹In order to determine the EPA effective date for a specific provision listed in this table, consult the Federal Register notice cited in this column for the particular provision.

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[FR Doc. 2014-24996 Filed 10/21/2014 at 8:45 am; Publication Date: 10/22/2014]